

Subject: FW: Surrogate's Court Petition against Lightstone

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From: David Berlin
Date: 07/09/2017 7:52 PM (GMT-05:00)
To: tmsmithlaw
Cc: John Wirt , Pam Wirt
Subject: Re: Surrogate's Court Petition against Lightstone

Hi Tom,

I'm checking back to see if you have heard from your client regarding accepting service of the petition.

I also want to let you know in advance that we do plan to file a notice of pendency on the Brooklyn property based on the new Surrogate's Court case. In your letter to Judge Batts of June 13, you accused plaintiffs of acting in bad faith and stated that we were "trying to circumvent the provisions of CPLR that do not permit successive Notices of Pendency." However, our research tells us that it is entirely appropriate for a litigant to file a second notice of pendency in a different action, which is the case with the new Surrogate's Court action. See, *Deutsch v. Grunwald*, 63 A.D.3d 872, 882 N.Y.S.2d 167, 2009 NY Slip Op 5082 (N.Y. App. Div., 2009).

As we are seeking to have the transaction that transferred the property to Lightstone undone, we believe it is necessary to file the notice of pendency in order to protect our clients' rights. However, if you have any authority that contradicts *Deutsch v. Grunwald*, we would be interested in your sharing it with us as we of course wish to move forward within the bounds of the law and of good faith.

I look forward to hearing from you.

Best,
David

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